

REMARKS

Applicant has rewritten independent claims 7, 9 and 12 for clarification by stating that the asymmetric vertical and horizontal distances are between the upper and lower electrodes.

With respect to the aforementioned Advisory Action, it is respectfully submitted that Fonash et al. do not show a process in figures 3a – 3j where the upper electrode is formed on the sacrificial layer surrounding the lower electrode as called for in step e. As the Examiner pointed out the upper electrode is smaller than the lower electrode. Accordingly, it is impossible for the upper electrode to surround the lower electrode. It is Applicant's contention that this forms a different structure than disclosed by the prior art.

Further, since the upper electrode in Fonash et al. is smaller than the lower electrode, it is impossible for it to surround the lower electrode. Finally "surrounds" as defined in Webster's Dictionary means to extend around the margin of; to encircle. This step is not disclosed or suggested by the prior art. The fact that the smaller electrode is centered over the lower electrode as stated by the Examiner does not disclose or suggest forming an upper electrode that surrounds the lower electrode. It is Applicant's contention that this is not a mere change in shape or size and does impart patentability to the claims.

In addition to the above, since the upper electrode is smaller than the lower electrode there is no horizontal distance between the upper and lower electrodes as called for in Applicant's claims. Therefore, Applicant's structure is clearly different from the cited art and is formed by a novel process as called for in the amended claims.

Accordingly, it is Applicant's contention that all of the claims are now clearly and patentably distinguished over the cited references.

Prompt favorable action is requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
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Date: May 8, 2008